

DMJ:BTR
F.#2007R02101

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

- against -

BIAGIO VIGLIOTTI,
also known as "Benny,"

Defendant.

- - - - -X

THE UNITED STATES ATTORNEY CHARGES:

INTRODUCTION

At all times relevant to this Information, unless
otherwise indicated:

The Defendant and Companies

1. The defendant BIAGIO VIGLIOTTI, also known as "Benny," ("VIGLIOTTI") owned and operated Luvin Construction, Inc. ("Luvin"), a New York State Corporation located in Westbury, New York. Luvin operated at construction sites located in the New York Metropolitan area, including Suffolk, Nassau and Queens counties. Luvin primarily provided construction management services in connection with the building and renovation of post offices for the United States Postal Service ("USPS") and other federally funded projects.

2. The defendant VIGLIOTTI also owned and operated FML Contracting Inc. ("FML"). FML was a New York State

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I N F O R M A T I O N

Cr. No. 12 CR 324
(T. 26, U.S.C., § 7202;
T. 18, U.S.C., §§ 1349
and 3551 et seq.)

Corporation located in Westbury, New York, that VIGLIOTTI established to provide labor for Luvin's federally funded projects.

The Prevailing Wage Requirement

3. The Davis-Bacon Act, Title 40, United States Code, Section 3142 ("The Act"), provided, in relevant part, that contractors and subcontractors that operated under federally funded contracts for construction and renovation projects must pay workers the "prevailing wage rate." Prevailing wage rates were published in the Federal Register. In order to comply with the Act and to receive payment from the USPS under its federally funded projects, the defendant VIGLIOTTI, as the owner and operator of Luvin and FML, was required to submit Requests for Payment ("RFP's") to the USPS, signed under the penalties of perjury, that contained information concerning the amount of work performed during a particular time period and verification that workers were paid at the prevailing wage rate.

4. In addition to RFPs, the Act provided that contractors and subcontractors that performed work on federally-funded projects must submit certified payroll reports ("CPRs") on a weekly basis. CPRs were required to set forth the names of the individuals who worked on the projects, as well as the rate of pay provided to, and the number of hours and days worked by each individual.

The Withholding Tax Requirement

5. Pursuant to Title 26 of the United States Code, employers, including FML, had a duty to collect, truthfully account for and pay over to the Internal Revenue Service ("IRS") Federal Insurance Contributions Act ("FICA") taxes, and to file an Employer's Quarterly Federal Tax Return, Internal Revenue Service Form 941 ("Form 941"). FICA requires the payment of taxes by employees and employers to fund various federal benefit programs, including Social Security and Medicare. As the owner and operator of FML, the defendant VIGLIOTTI was required to collect, truthfully account for and pay over to the IRS FICA taxes that were due and owing.

The Scheme to Defraud

6. In or about and between January 2002 through December 2008, the defendant VIGLIOTTI devised and executed a scheme and artifice to defraud the USPS and to obtain money from it by submitting materially false and fraudulent RFPs and CPRs.

7. It was a part of the scheme that the defendant VIGLIOTTI paid Luvin and FML employees who worked on federally funded projects for the USPS wages that were below the required prevailing wage rates.

8. It was a further part of the scheme that the defendant VIGLIOTTI, submitted RFPs and CPRs to the USPS that falsely represented that VIGLIOTTI paid the applicable prevailing

wage rates to Luvín and FML employees when, in truth and in fact, as VIGLIOTTI then and there knew and believed, the wage rates paid were substantially lower than the amounts stated on the RFPs and CPRs.

9. It was a further part of the scheme that the defendant VIGLIOTTI cashed checks, made payable to Luvín and FML, and used the cash to pay wages to FML employees (the "Cash Wages"). FML filed Forms 941 for the second quarter of 2006 in which the defendant VIGLIOTTI knowingly and falsely omitted the Cash Wages from the gross wages and FICA taxes reported to the IRS in order to avoid paying the full amount of FICA taxes that FML owed.

COUNT ONE

(Conspiracy to Commit Mail Fraud and Wire Fraud)

10. The allegations contained in paragraphs one through nine are realleged and incorporated as if fully set forth in this paragraph.

11. On or about and between January 1, 2002 and December 31, 2008, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant BIAGIO VIGLIOTTI, also known as "Benny," together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud the USPS, and to obtain money and property from it by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of

executing such scheme and artifice, to (a) place and cause to be placed in a post office and authorized depository for mail matter, matters and things, to wit: false and fraudulent RFPs and CPRs for Luvín and FML, to be sent and delivered by the USPS, and to deposit and cause to be deposited such matters and things to be sent and delivered by private and commercial interstate carriers, contrary to Title 18, United States Code, Section 1341, and (b) transmit and cause to be transmitted writings, signals, and pictures by means of wire communication in interstate commerce, contrary to Title 18, United States Code, Section 1343.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT TWO

(Willful Failure to Collect and Pay over Taxes)

12. The allegations contained in paragraphs one through nine are realleged and incorporated as if fully set forth in this paragraph.

13. On or about July 15, 2006, within the Eastern District of New York and elsewhere, the defendant BIAGIO VIGLIOTTI, also known as "Benny," being the owner of FML and thereby being required to collect, truthfully account for and pay over FICA taxes to the IRS, did knowingly and willfully fail to collect, truthfully account for and pay over FICA taxes in the

approximate amount of \$40,583 to the IRS, knowing that such FICA taxes were due and owing.

(Title 26, United States Code, Section 7202; Title 18, United States Code, Sections 3551 et seq.)

A handwritten signature in black ink, appearing to read "Loretta E. Lynch", is written over a horizontal line.

LORETTA E. LYNCH
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

